

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIM D. FULLMER, et al.,

Plaintiffs,

v.

ANITA BROWN, et al.,

Defendant.

Case No. 2:09-cv-01442-MMD -PAL

ORDER

(Plf.'s Motion for Attorney Fees – dkt. no.
122).

I. SUMMARY

Before the Court is Plaintiff's Motion for Attorney Fees. (Dkt. no. 122.) The Court has also considered Defendant's Opposition and Plaintiff's Reply. For reasons discussed below, the Motion is granted in part and denied in part.

II. BACKGROUND

This case arises out of the alleged neglect and abuse suffered by Ti'mia, Ti'mar, and Timothy Fulmer ("Fullmer Children") while residing at Anita Brown's home. In March of 2004, Clark County removed the Fullmer children from the custody, care, and control of their parents, Tim and Tanya Fullmer. The Fullmer Children were placed in the custody of Defendant Clark County. Around March 2004, Clark County placed the Fullmer children in the care, custody, and control of Defendant Anita Brown. During the course of the Fullmer Children's stay with Defendant Anita Brown, the Fullmer Children were allegedly neglected and abused.

1 After more than two years of litigation, Plaintiff reached a settlement with
 2 Defendants Clark County, Felicia Tucker, Amy Jaffe, and Susan Rothschild (collectively
 3 “Clark County”). On December 7, 2011, this Court approved the settlement. (Dkt. no.
 4 120.)

5 According to the terms of the settlement, Clark County would pay the Fullmer
 6 Children \$150,000 to settle their claims. The parties agreed Plaintiff’s attorney fees and
 7 costs would be paid separately from the Fullmer Children’s settlement. The parties
 8 agreed that Plaintiff’s attorney fees should be awarded in a sum not less than \$40,000 or
 9 more than \$60,000, subject to the Court’s discretion. Additionally, the parties agreed
 10 that documented costs up to \$17,000 would be paid directly by Clark County.

11 Plaintiff asks this Court to award attorney’s fees in the amount of \$60,000 and
 12 costs in the amount of \$17,000.

13 **III. DISCUSSION**

14 **A. Attorney’s Fees**

15 Reasonable attorney’s fees are based on the “lodestar” calculation set forth in
 16 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). See *Fischer v. SJB-P.D., Inc.*, 214 F.3d
 17 1115, 1119 (9th Cir. 2000). The Court must first determine a reasonable fee by
 18 multiplying “the number of hours reasonably expended on the litigation” by “a reasonable
 19 hourly rate.” *Hensley*, 461 U.S. at 433. Next, the Court decides whether to adjust the
 20 lodestar calculation based on an evaluation of the factors articulated in *Kerr v. Screen*
 21 *Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), which have not been subsumed in the
 22 lodestar calculation. See *Fischer*, 214 F.3d at 1119 (citation omitted).

23 The factors the Ninth Circuit set forth in *Kerr* are:

24 (1) the time and labor required, (2) the novelty and difficulty of the
 25 questions involved, (3) the skill requisite to perform the legal service
 26 properly, (4) the preclusion of other employment by the attorney due to
 27 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed
 28 or contingent, (7) time limitations imposed by the client or the
 circumstances, (8) the amount involved and the results obtained, (9) the
 experience, reputation, and ability of the attorneys, (10) the “undesirability”
 of the case, (11) the nature and length of the professional relationship with
 the client, and (12) awards in similar cases.

1 *Kerr*, 526 F.2d at 70. Factors one through five are subsumed in the lodestar calculation.
 2 *See Morales v. City of San Rafael*, 96 F.3d 359, 364 n. 9 (9th Cir. 1996). Further, the
 3 sixth factor, whether the fee is fixed or contingent, *may not* be considered in the lodestar
 4 calculation. *See Davis v. City & Cnty. of S.F.*, 976 F.2d 1536, 1549 (9th Cir. 1992),
 5 *vacated in part on other grounds*, 984 F.2d 345 (9th Cir. 1993). Once calculated, the
 6 “lodestar” is presumptively reasonable. *See Pennsylvania v. Delaware Valley Citizens’*
 7 *Council for Clean Air*, 483 U.S. 711, 728 (1987). Finally, only in “rare and exceptional
 8 cases” should a court adjust the lodestar figure. *Van Gerwen v. Guarantee Mut. Life*
 9 *Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000) (internal quotations omitted). *See also Fischer*,
 10 214 F.3d at 1119 n. 4 (stating that the lodestar figure should only be adjusted in rare and
 11 exceptional cases).

12 **1. Reasonable Hourly Rate**

13 Courts consider the experience, skill, and reputation of the attorney requesting
 14 fees when determining the reasonableness of an hourly rate. *Webb v. Ada County*, 285
 15 F.3d 829, 840 & n.6 (9th Cir. 2002). A reasonable hourly rate should reflect the
 16 prevailing market rates of attorneys practicing in the forum community for “similar
 17 services by lawyers of reasonably comparable skill, experience and reputation.” *See id.*;
 18 *see also Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). To inform and assist the
 19 court in the exercise of its discretion, “[t]he party seeking an award of fees should submit
 20 evidence supporting the . . . rates claimed.” *Hensley v. Eckerhart*, 461 U.S. 424, 433
 21 (1983); *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 (9th Cir. 1987). A
 22 rate determined through affidavits is normally deemed to be reasonable. *Blum*, 465 U.S.
 23 895-96 n.11.

24 Plaintiff requests reimbursement of attorney’s fees at \$350 an hour for Attorney
 25 Marjorie Hauf’s time based on her experience as a partner at Ganz & Hauf. Plaintiff
 26 offers the affidavits of three Las Vegas attorneys as evidence that the following rates
 27 charged are reasonable in the Las Vegas legal community: \$350 for Partners, \$250 for
 28 Associates, \$150 for Law Clerks, and \$90 for support staff. Clark County does not

1 present any competing affidavits. Instead, Clark County argues that Hauf's 2004 and
2 2005 rate when she was an associate, approved by the Ninth Circuit in *Lytle v. Carl*, 382
3 F.3d 978 (9th Cir. 2004), is still reasonable today especially when considering the
4 economic decline. The Court disagrees.

5 Based on the general increase in fees over time, Hauf's experience and normal
6 hourly rate, and the nature of this case, an increase in Hauf's fees is warranted. Hauf is
7 no longer an associate and has an additional seven years of experience. As is
8 evidenced by the extensive record, Hauf expended a significant amount of time and
9 labor during the litigation. Hauf has expertise and experience with child abuse and
10 neglect cases. The amount of time and labor required to adequately litigate this matter
11 precluded Hauf from accepting other employment. Clark County does not contest any of
12 these facts and all these facts support an increase in Hauf's rate and fees.

13 Further, economic decline would affect the market rate, not an individual
14 attorney's rate. Absent any competing evidence, the Court finds the prevailing rate in
15 the Las Vegas legal community presented by Plaintiff's three affidavits to be reasonable.
16 Thus, an hourly rate of \$350 for Hauf is reasonable.

17 **2. Reasonable Hours Expended**

18 In addition to evidence supporting the rates claimed, "[t]he party seeking an award
19 of fees should submit evidence supporting the hours worked." *Hensley*, 461 U.S. at 433;
20 see also *Jordan*, 815 F.2d at 1263. "Where the documentation of hours is inadequate,
21 the district court may reduce the award accordingly." *Hensley*, 461 U.S. at 433. "The
22 district court also should exclude from this initial fee calculation hours that were 'not
23 reasonably expended'." *Hensley*, 461 U.S. at 433-34 (citation omitted). "In other words,
24 the court has discretion to 'trim fat' from, or otherwise reduce, the number of hours
25 claimed to have been spent on the case." *Edwards v. Nat'l Business Factors, Inc.*, 897
26 F. Supp. 458, 460 (D. Nev. 1995) (quotation omitted); see also *Gates v. Deukmejian*,
27 987 F.2d 1392, 1399 (9th Cir. 1992).

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1 The parties agree that Attorney Hauf has personally spent 197.5 hours working on
2 the case. After reviewing Plaintiffs' attached Exhibits 2 and 3, the Court agrees and
3 finds that Plaintiffs' calculation of 197.5 hours of attorney labor is a reasonable amount
4 of time spent on this litigation.

5 The reasonable fee of \$350 per hour multiplied by 197.5 hours of reasonably
6 expended time equals a lodestar of \$69,125. Defendants do not argue for a downward
7 adjustment under *Kerr*. As the parties have agreed to a \$60,000 cap on attorney's fees
8 and the lodestar is above the cap amount, this Court need not consider the *Kerr* factors
9 to determine what amount, if any, the lodestar should be adjusted upward. The Court
10 grants fees in the amount of \$60,000 to Plaintiff.

11 **B. Costs**

12 In the Settlement Agreement, the parties agreed that Clark County would
13 reimburse Plaintiff's counsel up to \$17,000 for costs. The costs provision requires
14 Plaintiff to submit supporting documentation of the costs to Clark County. Clark County
15 agrees that most of Plaintiff's documented costs are reasonable and reimbursable. The
16 total amount claimed is \$17,177.15. Plaintiff has agreed to withdraw \$876.60 worth of
17 scanning charges. (Dkt. no. 127, Ex.1). This brings the new amount claimed to
18 \$16,300.55. Of this amount, the parties agree upon \$9,143.33 of the reimbursable costs.
19 Clark County contends that other items, totaling \$7,157.22, lack documentation or are
20 questionable. The parties have been working to come to an agreement as to the
21 disputed costs. (Dkt. no. 127, Ex.1.) Accordingly, the Court denies Plaintiff's Motion as
22 it relates to costs pending additional information as to the progress of the parties'
23 negotiations.

24 **III. CONCLUSION**

25 IT IS THEREFORE ORDERED that Plaintiff's Motion for Attorney Fees is
26 GRANTED in part and DENIED in part.

27 IT IS FURTHER ORDERED that the parties file a joint status report on or before
28 October 15, 2012, as to any remaining cost issues that need to be addressed. The

1 parties should indicate: (1) the progress or success of negotiations; (2) what costs, if
2 any, remain disputed, and (3) if disputed, what evidence or information the Court should
3 consider to support a finding for either side.

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5 DATED THIS 1st day of October 2012.

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9 UNITED STATES DISTRICT JUDGE
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